UNITED STATES

v.

SILVER CHIEF MINING CO., INC.

IBLA 79-91 Decided April 16, 1979

Appeal from an October 18, 1978, decision of Administrative Law Judge Robert W. Mesch declaring invalid 16 millsite claims situated in Boise County, Idaho.

Affirmed.

1. Mining Claims: Millsites

   Where the proprietor of a lode mining claim seeks to obtain patent for a millsite in connection with his lode claim, the millsite claim is properly declared invalid if it is unsupported by any use or occupation of the claimed land for mining or milling purposes and does not contain a quartz mill or reduction works.

2. Mining Claims: Millsites

   A millsite claim located under the "quartz mill or reduction works" provision of 30 U.S.C. § 42 (1976) is properly rejected where no quartz mill or reduction works has been located on the claimed lands and no construction appears to be in progress.

3. Mining Claims: Millsites

   A millsite claim must be declared invalid where the land upon which it is located is mineral in character.

APPEARANCES: James H. Hawley, Jr., Esq., Boise, Idaho, for appellant;
Erol R. Benson, Esq., Office of the General Counsel, United States Department of Agriculture, Ogden, Utah, for appellee.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Silver Chief Mining Co., Inc., (Silver Chief), appeals from a decision of Administrative Law Judge Robert W. Mesch, dated October 18, 1978, declaring invalid 16 millsite claims located under the provisions of 30 U.S.C. § 42 (1976). At the request of the Forest Service, the Idaho State Office, Bureau of Land Management (BLM), issued a complaint on September 27, 1977, charging inter alia, that the subject millsites (1) are not used for mining and milling purposes, (2) there is no quartz mill or reduction works on the millsites, (3) the lands involved are mineral in character, and (4) that the millsites are not being held in good faith. Contestee denied all the charges, and a hearing was held on June 28, 1978, at Boise, Idaho. As the decision (page 2) below noted:

> The 16 mill sites are contiguous and cover 80 acres of land. They are situated within the Boise National Forest, approximately 25 road miles northeast of Idaho City, Idaho. On January 27, 1975, the contestee filed an application with the Bureau of Land Management seeking to obtain a patent for the mill sites.
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> The contestee owns eight patented lode mining claims and two patented mill sites in the general area of the contested mill sites. The patented property, known as the Banner Mine Group, produced a significant amount of silver from about 1864 to 1911. During the mining operations, a considerable amount of waste, dump and tailings was deposited on the property. The contestee believes that this material contains sufficient silver ore to justify a processing operation. It asserts that the sixteen mill sites are necessary for final placement of the leached-pulp tailings after processing operations on the patented Banner millsite. At the time of the hearing the contestee had not as yet placed any physical improvements on any of the contested mill sites and the mill sites had not been used for tailing storage or any other mining or milling purposes.

The decision below found that none of the millsites in question is being used for mining or milling purposes and that "no recognized agency of operative mining or milling occupies the millsites". No evidence in the record contradicts this finding, but Silver Chief, on appeal, says that, "said claims were made part of a reclamation plan designed to meet State statutory requirements. Construction of said plan was an essential first step in development of the overall operation and constitutes use of the millsites within the purview of the statute."

As the decision below properly states, 30 U.S.C. § 42 (1976) provides for two distinct types of millsite claims which may be

established in connection with lode mining claims. The statute reads, in relevant part:

> (a) Where nonmineral land not contiguous to the vein or lode is used or occupied by the proprietor of such vein or lode for mining or milling purposes, such nonadjacent surface ground may be embraced and included in an application for a patent for such vein or lode, and the same may be patented therewith, subject to the same preliminary requirements as to survey and notice as are applicable to veins or lodes * * *. The owner of a quartz mill or reduction works, not owning a mine in connection therewith, may also receive a patent for his mill site, as provided in this section. [Emphasis added.]

[1] Turning our attention to the first class of possible millsite claims, those used by the proprietor of a vein or lode "for mining or milling purposes," we confront the question of whether contestee has made any qualifying use of the claims. (It is clear from the record that contestee is the record owner of nearby lode claims.) Despite contestee's assertion that its reclamation plan constitutes such a use, we find that no mining or milling activity is being conducted on the subject lands. Contestee, in its posthearing reply brief, cites Charles Lennig, 5 L.D. 190 (1866), in support of its contention that the proprietor of a lode mine uses a noncontiguous tract for mining or milling purposes when he "expects to require it" in connection with his lode. This is not a correct interpretation of Lennig for, while a claimant may properly seek patent for a millsite which is not yet used in its entirety for milling, Lennig required some present mining or milling activity or use "evidenced by outward and visible signs of the applicant's good faith" 1/ on the claim as a precondition to a millsite patent. This rule has been repeated and

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1/ Lennig, at 5 L.D. 192, recites as follows in pertinent part:

"The second clause of this section [30 U.S.C. § 42 (1976)] manifestly makes the right to patent a mill site dependent upon the existence on the land of a quartz-mill or reduction-works. But the terms of the first clause are more comprehensive. Under them it is not necessary that the land be actually a 'mill-site.' They make the use or occupation of it for mining or milling purposes the only pre-requisite to a patent. The proprietor of a lode undoubtedly 'uses' non-contiguous land 'for mining or milling purposes' when he has a quartz mill or reduction works upon it, or when in any other manner he employs it in connection with mining or milling operations. For example, if he uses it for depositing 'tailings' or storing ores, or for shops or houses for his workmen, or for collecting water to run his quartz mill, I think it clear that he would be using it for mining or milling purposes. I am also of opinion that 'occupation' for mining or milling purposes, so far as it may be distinguished from

developed in a great number of Department decisions all holding that mere intentions or purpose of performing acts of use or occupation will not satisfy the statute. See, United States v. Wayne Highley, 30 IBLA 21 (1977), United States v. Dora M. Werry, 14 IBLA 242, 81 I.D. 44 (1974), United States v. Langmade, 52 I.D. 700 (1929). Since contestee has failed to use the subject claims for the required purposes, they cannot be patented as millsite lands used in connection with a lode or vein, and contestee's patent application is properly rejected.

[2] As noted, supra, a millsite patent may issue under 30 U.S.C. § 42 (1976) to a claimant who operates a quartz mill or reduction works on the millsite land. Contestee operates a mill on a a patented tract in the vicinity of the subject claims. On appeal contestee argues that, "the mere fact that the mill was constructed on the presently patented land rather than on one of the millsite claims surely is not adequate or proper reason for invalidating the millsite claims." Unfortunately, this fact is abundantly sufficient to compel invalidadation of the claims. Since the claims cannot be patented in connection with a lode or vein, supra, they must qualify as millsites held for a quartz mill or reduction works or fail to qualify for patent entirely. As we have held on numerous occasions,

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fn. 1 (continued)
'use,' is something more than mere naked possession, and that it must be evidenced by outward and visible signs of the applicant's good faith. The manifest purpose of Congress was to grant an additional tract to a person who required or expected to require it for use in connection with his lode; that is, to one who needed more land for working his lode or reducing the ores than custom or law gave him with it. Therefore, when an applicant is not actually using the land, he must show such an occupation, by improvements or otherwise, as evidences an intended use of the tract in good faith for mining or milling purposes.

"In the case at bar the record shows that the land is suitable for milling purposes, because it lies on the banks of a creek and also contains springs which supply an abundance of water. It was originally located 'as a mill site or place upon which to erect a mill, furnace, or other works necessary for the reduction of ores from the Eureka mines or other mines in this district;' and the application now on file sets forth that it is 'claimed by the said applicant as and for a mill site for the working of the ores from said mining claim.' But in fact it has never been used or occupied for any such purpose. On the contrary, it appears that the said water is used in running a 'smelter located on the Eureka mine,' and that it is conveyed in pipes some two miles for that purpose. These facts show plainly that the land is not used or occupied for the purpose for which it was located, or for any purpose in connection with mining or milling. The use of the water is, in my judgment, not a use of the land."

a quartz mill or reduction works location is properly declared invalid where there is no such mill or works on the lands sought to be patented. As we held in United States v. Wayne Highley, supra, "Where a millsite claim is not being used for mining or milling in connection with mining claims owned by the owner of the millsite, and at the time of the contest there is no quartz mill or reduction works on the site, the millsite must be declared null and void." See also, United States v. Rukke, 32 IBLA 155 (1977); United States v. Dietemann, 26 IBLA 556 (1976); United States v. Almgren, 17 IBLA 295 (1974). Even where a mill structure was on a claim but was inoperable and had not been used for a reasonable time, we have held that the requirements of the law for a millsite had not been met. United States v. Cuneo, 15 IBLA 304, 81 I.D. 262 (1974).

[3] Contestee's third and final exception to the decision below is its objection to Judge Mesch's finding that the lands in question are mineral in character. Contestee offers an excerpt from the hearing testimony of the Forest Service mineral examiner in support of its contention that the Government has failed to establish the mineral character of the lands here at issue. We believe, however, that contestee misunderstands the legal import of the designation "mineral in character." It is not necessary, as contestee suggests, that the Government physically show minerals to be present on the claims, "in sufficient quantity and quality to permit a profitable mining operation" in order to establish the mineral character of the lands. The difference between the test of "mineral character" and "discovery of a valuable mineral deposit" under the mining laws is largely one of proof. Direct evidence of the existence of minerals is necessary for a discovery. However, to make a prima facie case of "mineral in character", it is merely necessary that the Government show, by geological inference if necessary, that the lands in question presumptively contain mineral of such quality and quantity to render expenditures for its extraction reasonable and prudent. State of California v. E. O. Rodeffer, 75 I.D. 176, 181 (1968). Geological inference alone, however, would not suffice to prove discovery, but might constitute sufficient evidence to establish the mineral character of land.

The evidence in the record tending to support the conclusion that the lands in question are mineral in character can be summarized as follows: (1) the testimony of Donald Wood (Tr. 80) to the effect that he has been mining the properties in question and has made two shipments totaling approximately 8 tons of ore from the claims. Wood stated that he received $806 for the first of these shipments; (2) the testimony of Mr. Mullin, the Forest Services mineral examiner, stating that the lands were, in his opinion, mineral in character and his reasons therefor; and (3) the general history of successful mining in the area of the claims as described in the various supporting documents submitted in connection with this case. See, e.g., contestant's Exhibit 1, contestee's Exhibit B. Although there is not sufficient evidence of a discovery of a valuable mineral deposit as

would be necessary to validate a mining claim, there is enough evidence to support the Government's prima facie case that the land is mineral in character. Appellants presented no evidence to rebut that evidence. We thus find the decision below regarding the mineral character of these lands to be well justified by the record and therefore, we find no rational basis to disturb that conclusion.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Frederick Fishman
Administrative Judge

We concur:

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Joan B. Thompson
Administrative Judge

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Anne Poindexter Lewis
Administrative Judge